STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MARTEZ DAVONNE DAVIS,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ELOISE PATRICIA SEAWRIGHT,

Respondent-Appellant.

UNPUBLISHED
June 13, 2000

No. 220184
Wayne Circuit Court
Juvenile Division
LC No. 90-284263

Before: Murphy, P.J., and Collins and Owens, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to the minor child, Martez Davonne Davis (DOB 03/21/90). The court terminated respondent's parental rights following a referee's determination that clear and convincing evidence warranted termination pursuant to MCL 712A.19b(3)(c)(*i*) (conditions leading to adjudication continue to exist), (g) (unable to provide proper care and custody), and (j) (reasonable likelihood child will be harmed if returned to parent); MSA 27.3178(598.19b)(3)(c)(*i*), (g) and (j), and that termination was not contrary to the child's best interests. We affirm.

Respondent's minor child was adjudicated to come under the jurisdiction of the court on April 12, 1990, pursuant to a petition filed when the child was six days old. Respondent (DOB 11/29/72) was herself a temporary ward of the court, due to neglect, at the time of the child's birth. Her child was made a temporary ward based on respondent's placement in foster care and her lack of resources to care for the child. The child's father, Sylvester Martez Davis (DOB 7/19/72), was shot and killed when respondent was three months pregnant and is not a party to this appeal. Since this adjudication, respondent has also had a second child, Stephany Seawright (DOB 5/2/92), who has been in the care of her father and paternal grandmother from birth and likewise is not a party to this case.

At the time Martez Davis was adjudicated a temporary ward, a case treatment plan was filed with respect to respondent. According to this 1990 plan, respondent was to secure her high school diploma or equivalency, achieve parenting skills, develop independent living skills, and, once emancipated, to establish suitable income and housing. Respondent was to attend therapy and parenting skills classes in order to achieve these goals. The child was placed in the same foster home as respondent in order to engender a bond. Respondent was subsequently dismissed as a temporary ward on November 29, 1990, her 18th birthday. At that point, respondent moved from the foster home she shared with her child.

Over the following nine years, Lutheran Social Services oversaw respondent's progress and provided numerous treatment plans. Respondent failed to suitably comply with any of these plans. In the ongoing effort to assist respondent in establishing an appropriate life, such that the child could be returned to her custody, respondent was even provided three opportunities to care for the child on an extended visitation status. Each of these three placements ended with the child's return to foster care as the result of respondent's failure to comply with treatment plans and court orders. Ultimately, termination of respondent's parental rights was sought and a final dispositional review hearing was conducted on April 19, 1999.

At the conclusion of this hearing, the hearing referee found that although respondent had, during the nine years, at times substantially complied with the treatment plans, such sporadic compliance was not sufficient to allow the child to be safely returned to her care. The referee found that clear and convincing evidence warranted termination pursuant to MCL 712A.19b(3)(c)(*i*), (g) and (j); MSA 27.3178(598.19b)(3)(c)(*i*), (g) and (j), and that termination was clearly not contrary to the child's best interests. The written order terminating respondent's rights was entered on May 7, 1999. Respondent now contends that the court clearly erred in finding that clear and convincing evidence supported termination under these statutory factors. We disagree.

A two-prong test applies to a decision of the family division of circuit court to terminate parental rights. "First, the probate court must find that at least one of the statutory grounds for termination, MCL 712A.19b; MSA 27.3178(598.19b), has been met by clear and convincing evidence." *In re Sherman*, 231 Mich App 92, 97; 585 NW2d 326 (1998). This Court reviews the family court's decision under the clearly erroneous standard. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding of fact is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *Miller, supra* at 337; *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). To be clearly erroneous, a decision must be more than maybe or probably wrong. *Sours, supra* at 633. Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller, supra* at 337.

Once a statutory ground for termination of parental rights is established, the court must terminate parental rights unless it finds that termination of parental rights to the child is clearly not in the child's best interest. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997). Once the petitioner has established a ground for termination of parental rights, the burden of going forward with evidence to establish that termination is clearly not in the child's

best interest rests with the respondent. *Sherman, supra* at 98; *Hall-Smith, supra* at 473. If the respondent fails to produce any evidence rebutting the presumption that termination of parental rights is appropriate, termination must be ordered, but if the respondent proffers evidence on the issue, the petitioner must satisfy the burden of proof. *In re Boursaw*, 239 Mich App 161, 179-180; ___ NW2d ___ (1999). Finally, this Court reviews the family court's now non-discretionary decision regarding termination in its entirety for clear error. *Sherman, supra* at 98; *Hall-Smith, supra* at 472.

The applicable statutory subsections, MCL 712A.19b(3)(c)(*i*), (g) and (j); MSA 27.3178(598.19b)(3)(c)(*i*), (g) and (j), provide:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
>
> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
>
> > (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
>
> * * *
>
> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
>
> * * *
>
> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Subsection (3)(g) requires clear and convincing evidence of both a failure and an inability to provide proper care and custody. *In re Hulbert*, 186 Mich App 600, 605; 465 NW2d 36 (1990). With regard to the potential for improvement relevant to both this subsection and subsection (3)(c)(*i*), the determination of what is a reasonable time properly includes both how long it will take for the parent to improve conditions and how long the child can wait for the improvement. *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991).

The conditions leading to adjudication, while related to respondent's status as a temporary court ward, essentially concerned respondent's inability to provide her child proper care. Respondent admitted at the 1990 adjudication hearing that she was unable to provide a home, a suitable plan or

medical coverage for the child. The evidence demonstrates that despite the years of assistance provided by Lutheran Social Services, at the time of the dispositional hearing respondent still lacked the most basic parenting skills. In addition, respondent had not effectively addressed substance abuse problems that arose during the intervening years, and she was still unable to maintain steady employment or secure suitable housing. It is clear that respondent could no better provide for her child than she could at the time of adjudication.

The evidence likewise demonstrates that when given the opportunity to provide for her child on extended visitation arrangements, respondent repeatedly failed in such undertakings. On three separate occasions, between early 1996 and late 1997, the child was placed with respondent on extended visitation due to respondent's substantial compliance with her treatment plans. On each occasion, the child was subsequently returned to foster care after respondent's compliance with the treatment plans trailed off or abruptly ended. Respondent at one time moved out of her residence with the child, failing to contact her case worker for over two months. On another occasion respondent persistently refused to comply with the treatment plan requirements that she attend therapy and complete weekly drug and alcohol screens. Finally, respondent dropped the child off with her relatives, less than two months after he had last been returned to her, saying she was unable to care for him. We conclude that the court did not err in finding that clear and convincing evidence supported termination under subsections (3)(c)(*i*) and (3)(g).

Respondent also argues that the court clearly erred in determining that termination of her parental rights was clearly not contrary to the child's best interests. However, respondent presented no evidence on this issue, thus failing to carry her burden of going forward with such evidence. *Sherman, supra* at 98; *Hall-Smith, supra* at 472-473. The evidence that was presented indicated that the child was doing well in foster care, but that he needed permanency in his placement and planning in order to further his growth and development. Respondent, meanwhile, was still living with various friends at unconfirmed locations. Though she claimed to be employed and to be attending substance abuse and mental health counseling, such compliance with the latest plan was recent and unconfirmed. Accordingly, with no evidence to rebut the presumption that termination of parental rights was appropriate, termination was mandatory. *Boursaw, supra* at 179-180.

Given that the requisite showing was made with respect to subsections (3)(c)(*i*) and (3)(g), we need not address subsection (3)(j). *Sherman, supra* at 97; see also *In re McIntyre,* 192 Mich App 47, 50; 480 NW2d 293 (1992).

Affirmed.

/s/ William B. Murphy
/s/ Jeffrey G. Collins
/s/ Donald S. Owens